UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

TODD-AO STUDIOS

Employer/Petitioner

and Case No. 31-UC-302

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES
AND MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE
UNITED STATES, ITS TERRITORIES
AND CANADA, AFL-CIO, CLC

Union/Interested Party[1]/

and

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL
UNION 40, AFL-CIO

Union/Interested Party

REGIONAL DIRECTOR'S DECISION AND ORDER

Upon a petition duly filed under § 9(b) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

[1]/ The names of the Unions appear as corrected on the record.

2. The Petitioner-Employer, Todd-AO Studios (herein, the "Employer"), is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]/

3. The parties stipulated and I hereby find that the two labor organizations involved herein, the International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO ("I.A."), and the International Brotherhood of Electrical Workers, Local Union 40, AFL-CIO ("I.B.E.W."), are labor organizations within the meaning of Section 2(5) of the Act. Both are currently recognized by the Employer as the bargaining representative of certain of Employer's employees and, thus, are interested parties herein.

4. By filing the instant Unit Clarification Petition, the Employer seeks clarification of its current I.A. bargaining unit to accrete all employees that have historically been represented by I.B.E.W. into the I.A. unit. The I.B.E.W. protests any unit clarification; the I.A., while appearing on the record, stated that it was taking a neutral position. No post-hearing brief was filed by the I.A.

BACKGROUND

The Employer contends that there are seven facilities involved in this matter which are located at: (1) 900 North Seward Street ("900 facility"), (2) 1021 North Seward Street ("1021 facility"), (3) 1147 North Vine Street ("Vine facility"), (4) 4024 Radford Avenue, also referred to by the parties as the CBS facility ("CBS facility"), (5) 2901 West Alameda Street ("Alameda facility"), (6) 3000 Olympic Boulevard, also referred to by the parties as the Olympic or Lantana facility ("Lantana facility"), and (7) 1861 South Bundy ("Bundy facility"). All the above facilities, except Lantana and Bundy, are operated by the Employer, a corporate subsidiary of Liberty Livewire Corporation

[2]/ Todd-AO Studios is a wholly owned subsidiary of Liberty Livewire Corporation, a Delaware Corporation, with places of business located throughout the greater Los Angeles area, in the State of California. The Employer provides postproduction services for commercial motion pictures and the television industry, including post-production sound editing, mixing and recording. The Employer, in the last 12 months, a representative period, purchased and received materials valued in excess of $50,000 directly from sources located outside the State of California. Thus, the parties stipulated and I find that the Employer meets the Board's discretionary, as well as its statutory, jurisdictional standard. *Siemons Mailing Service*, 122 NLRB 81 (1958).

(formerly known as Todd-AO Corporation) which, in turn, is a subsidiary of Liberty Media Corporation. The Lantana and Bundy facilities are referred to collectively by the parties as the "Santa Monica" facilities and are operated by Todd-AO Studios West, a separate corporation, also a corporate subsidiary of Liberty Livewire Corporation.

The I.B.E.W. contends that since Todd-AO Studios West is not the named Petitioner in the Unit Clarification Petition and there is no evidence that Todd-AO Studios West was ever merged into Todd AO Studios, the petition should be dismissed as to the "Santa Monica" facilities.

Contrary to the Employer, the I.B.E.W. also claims that two additional facilities are involved in this matter. Liberty Livewire Corporation took over both of these locations, 1007 Seward ("1007 facility") and 6601 Romaine ("6601 facility"), from Todd-AO Corporation. It appears from the record that, as of the hearing, Liberty Livewire Corporation, not the Employer, operated these facilities which were not deemed by the Employer part of its operations.

BARGAINING REPRESENTATIVES AND UNITS AT THE EMPLOYER

The I.A. and I.B.E.W. have been, for many years, the recognized collective bargaining representatives of two units of employees employed by the Employer and its predecessor corporations. The dates of origin of these collective bargaining relationships do not appear on the record. The I.A. is the Section 9(a) bargaining representative of a multi-employer collective bargaining unit encompassing employees in a wide variety of crafts and classifications of work in the entertainment industry, ranging from property craftspersons to motion picture costumers and publicists. I.A. unit employees are employed throughout the west coast studios of the employers covered under the collective bargaining agreement ("I.A. Basic Agreement") between the I.A. and the Alliance of Motion Picture and Television Producers ("AMPTP"). The most recent I.A. Basic Agreement is effective from August 1, 2000, through July 31, 2003. The employers in this multi-employer collective bargaining unit, represented by the AMPTP, include the Employer.

The Employer became a signatory to the I.A. Basic Agreement by virtue of executing Agreements of Consent for its respective facilities. As evidenced in the

record, the Employer and the I.A. are signatories to five different Agreements of Consent for the above named facilities, excluding the "Santa Monica" facilities. The two "Santa Monica" facilities are covered by one single Agreement of Consent, signed by Todd-AO Studios West. Apparently, all the Agreements of Consent were signed as the Employer acquired each of the facilities. At hearing, the Employer introduced into evidence four Agreements of Consent. The first, signed by the Employer on July 31, 2000 and by the I.A. on August 25, 2000, was effective until July 31, 2000. The second is an Agreement of Consent for the "Santa Monica" facilities signed by Todd-AO Studios West on July 31, 2000 and by the I.A. on August 25, 2000.[3]/ The third and fourth agreements of consent are expired agreements covering the "Santa Monica" facilities and executed by Todd-AO Studios West and the I.A. in 1995 and 1997, respectively.

The Employer approximates that it employs two hundred I.A.-represented employees at the seven facilities named in the amended petition; they are sound technicians, cinetechnicians, sound editors, librarians, and projectionists. The overall group at issue in this proceeding is the sound technicians, which consist of Y-1 mixers, ("mixers"), recordists, Y-4 operative supervisors and/or engineers, ("Y-4 employees"), and Y-7a Utility Sound Technicians, ("Y-7a employees"). Only two I.A. classifications within the sound technicians group are the focus of this petition, the Y-4 and Y-7a employees. Y-7a employees are service technicians and their position is very similar to that of Y-4 employees, except that Y-4 employees have more experience and can have supervisory duties.[4]/

I.A. has designated its west coast Locals, who are also signatories to the I.A. Basic Agreement, to act as its agents. In this capacity, it is their responsibility to apply the I.A. Basic Agreement and the relevant Local agreement to their own crafts. In the instant matter, there are four Local agreements applicable to these proceedings.[5]/

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[3]/ The parties stipulated that this Agreement is the renewal of the I.A. Agreement of Consent and covers the time period of 2000 to 2003.

[4]/ The collective bargaining agreements, as well as the parties' and witnesses' terminology, and the parties' post-hearing briefs are greatly varied as to what these employees are called. For sake of clarity, they will be referred to herein by their classification numbers as listed in the relevant collective bargaining agreements.

[5]/ The four Local agreements are as follows. The first three were executed by the International Sound Technicians, Cinetechnicians, Television Engineers, Studio Projectionists and Video Projection Technicians, Local No. 695-I.A. ("Local No. 695"). The earliest of these agreements was effective

There is no evidence in the record that prior to the filing of the Unit Clarification petition on August 15, 2001 or during negotiations for the I.A. Basic Agreement or the most recent four Local agreements, the issue of accretion of employees historically represented by the I.B.E.W. into the I.A. bargaining unit was raised by either the Employer or the I.A.

In addition to being a party to the I.A. Basic agreement and the I.A. Local agreements, the Employer has also been bound by the basic standard motion picture agreement (the I.B.E.W. Master Agreement) between the AMPTP and the I.B.E.W. The Letter of Assent creating this obligation, unlike the I.A. Agreement of Consent, does not bind the Employer to become part of the multi-employer bargaining unit but instead only binds the Employer to become a signatory to the I.B.E.W. Master Agreement. The facilities within the scope of the unit for which the I.B.E.W. is recognized are not defined in the Letter of Assent or in the I.B.E.W. Master Agreement. The Letter of Assent makes no express reference to the scope of the unit work, while the I.B.E.W. Master Agreement merely defines it as employer's employees performing work of the specified nature.

Todd-AO Glen Glenn Studios executed the Letter of Assent on October 17, 1997. From the record, it appears that as a result of the restructuring of the Employer's business, Todd-AO Glen Glenn Studios may have ceased to exist or been renamed. The Employer and the I.B.E.W. agree the I.B.E.W. contract has been in effect for three facilities (900, 1021 and the CBS facilities). As to the two "Santa Monica" facilities,

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from August 1, 1993 through July 31, 1996, and encompassed all projectionists (the "Projectionists' Agreement"). There is a successor agreement to this Agreement, which has not yet been printed. The next two Local No. 695 Agreements, termed the Cinetechnician's Agreement and the Sound Technicians' Agreement, were in effect from August 1, 1996, through July 31, 2000. Both Agreements have successor agreements; they have not yet been executed.

The final agreement is a Motion Picture Editor's Guild Local No.776 ("Local No. 776") Agreement covering editors (the "Editor's Agreement"), which was effective from August 1, 1996 to July 31, 2000. Upon expiration of this agreement, the parties entered into negotiations for a successive contract, which has not yet been executed.

the I.B.E.W. and the Employer agree, and the record establishes, that historically the I.B.E.W. collective bargaining agreement has not been extended to these two facilities.

I.B.E.W. claims that in addition to the 900, 1021 and CBS facilities, their contract also covers two additional facilities, the 1007 and 6601 locations. As indicated earlier, it appears from the record that, as of the hearing, Liberty Livewire Corporation, not the Employer, operated these facilities. The evidence on the record also indicates that, prior to Liberty Livewire Corporation taking over these facilities, an I.B.E.W. contract was in effect at these locations. The record is unclear as to whether or not I.B.E.W.-represented 3735 employees (the classification at issue herein) have, since the takeover by Liberty Livewire Corporation, worked at those facilities and, if so, by whom they were employed. The record did establish that the Employer has sent Barry Critzer (Critzer), whose status as a casual or regular part-time employee is at issue, to perform work at these two locations but it does not reveal whether this was before or after Liberty Livewire Corporation acquired them.

The record is not clear as to whether the I.B.E.W. collective bargaining agreement is in effect at the Vine facility. On the first day of hearing, the I.B.E.W. argued that its contract applied to the Vine facility, while the Employer maintained the opposite. The issue was not further adequately addressed in the record. However, in its post-hearing brief, the I.B.E.W. acknowledges "What is also clear from the record is that the Local 40 Agreement (referring to the I.B.E.W. agreement) never covered the two Santa Monica Facilities formerly (and apparently currently) operated by 'Todd-AO Studios West,' the Alameda Facility, or the Vine Facility."

Last of all, the most recent I.B.E.W. Master Agreement was effective from August 1, 1994 through July 31, 1997. A Memorandum of Agreement, dated August 1, 1997, between the AMPTP and I.B.E.W., extended the I.B.E.W. Master Agreement to July 31, 2001. There is no evidence in the record that indicates the parties further extended the contract or executed a successive contract prior to the filing of this Unit Clarification petition on August 15, 2001. The record is void of any evidence that the Employer and the I.B.E.W. have entered into subsequent collective bargaining negotiations. Finally, there is no evidence in the record that prior to the filing of the Unit Clarification petition or during the course of any prior negotiations, the Employer sought

to have the employees in the I.B.E.W. unit accreted into the I.A. unit, and/or that the I.B.E.W. rejected such a demand.

At the time of the hearing, the parties agreed the Employer's I.B.E.W.-represented unit consisted of at least one regular full-time employee, Hal Fanger ("Fanger"), who appears to be classified under the collective bargaining agreement as a 3735 employee. The present dispute involves this classification, and thus any regular part-time or full-time employee carrying out the duties of a 3735 employee.[6]/

The I.B.E.W. contends that in addition to Fanger, the Employer employs another regular part-time or full-time I.B.E.W.-represented employee, Critzer. The Employer maintains Critzer is a casual employee. The evidence shows that, from May of 2001 up to the first day of the hearing, September 25, 2001, Critzer had worked over 70 days. He worked 4 days in May, 16 days in June, 17 days in July, 23 days in August, and 16 days in September. The Employer scheduled Critzer to work on the day of the hearing and the three following days, and then expected to lay him off due to the lack of work.[7]/

According to the record, from July 2000 up to the first day of hearing, the Employer retained a total of 11 I.B.E.W.-referred employees, not counting Critzer, for specific projects at the 1021, 900 and CBS facilities. The Employer obtained these employees by contacting the I.B.E.W. These employees provided wiring and high voltage electrical services related to the construction and remodeling of the Employer's stages. The record established that the need for these employees is unpredictable. In the year 2000, the Employer utilized one such employee in the month of July, two in August and none from September through December. For the following year, from January 2001 to September, there were no I.B.E.W.-referred employees employed from January through February, one employed in March, and 9 employed from April through September.[8]/ The Employer did not anticipate hiring any I.B.E.W.-referred

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[6]/ As with the I.A.-represented employees at issue, the I.B.E.W.-represented classification is referred to by the classification number listed in the most recent collective bargaining agreement since the record contains varied terms to identify these employees.

[7]/ The record is silent as to Critzer's job classification, however, based upon the record description of his job tasks, it appears he is a 3735 employee.

[8]/ According to the Employer's records, the 11 employees are: George B. Doubiago (Doubiago), Terry L. Wade (Wade), Tommy F. Rizzo (Rizzo), Geoffrey Barnett (Barnett), Donald L. Neal (Neal),

employees for the last three months of 2001 because it did not have any major projects planned before the end of the fiscal year.[9]/

HISTORICAL OVERVIEW OF LABOR RELATIONS

The record indicates that since at least the 1940's there has been disagreement and tension between employers, the I.A. and the I.B.E.W. concerning which electrical work should be assigned to which Union under which conditions. Advancing technology since the 1940's has made it increasingly difficult to determine whether the electrical wiring work to be performed is that of the I.A., the I.B.E.W. or can be subcontracted out by the Employer. As a result, assignment disputes have continued to arise.

On January 19, 1998, the I.B.E.W. filed a grievance alleging the Employer had violated the collective bargaining agreement by subcontracting electrical work. The Employer's response was that it was its practice to subcontract electrical wiring work on major stage construction and remodeling projects. I.B.E.W. withdrew the grievance when the Employer provided evidence that it had in the past used the same subcontractor, under the same circumstances.

Thomas M. Boswell (Boswell), Owen P. Liebich (Liebich), Rudolph Torbich (Torbich), Liebach (no first name was provided), Steve Lane (Lane), and Robert Wilson (Wilson). Doubiago worked 15 days in July of 2000 and 25 days in 2001 (10 days in August and 15 days in September). Wade worked 8 days in 2000, all in the month of August. Rizzo worked a total 8 days in 2000, all in the month of August, and 1 day in March of 2001. Barnett worked 15 days in 2001 (6 days in April and 9 days in May). Neal worked 26 days in 2001 (3 days in April, 3 days in May, 10 days in August, and 10 days in September). Boswell worked 5 days in 2001 (4 days in May and 1 day in June). Liebich worked 5 days in 2001, all in June. Liebach worked 8 days in 2001, all in June. Torbich worked 22 days in 2001 (7 days in June, 5 days in August and 10 days in September). Lane worked 35 days in 2001 (20 days in August and 15 days in September). Wilson worked 20 days in 2001 (10 days in August and 10 days in September).

[9]/ At hearing, the I.B.E.W. argued that, in the entertainment industry, employees like its referred employees are treated as daily employees, have no guarantee of employment and are constantly laid off. The I.B.E.W. then argued that the Board should develop a rule similar to the construction industry eligibility formula set forth in *Daniel Construction Co*., 133 NLRB 264 (1961), as modified in 167 NLRB 1078 (1967) and *Steiny & Co*., 308 NLRB 1323 (1992), and the stagehands entertainment industry formula cited in *American Zoetrope Productions,* 207 NLRB 621 (1973). Inasmuch as this issue need not be decided in this Unit Clarification proceeding, and is mooted by the conclusion reached herein, it shall not be further addressed. No party has contended that this UC petition should be dismissed because the I.B.E.W.-represented unit consists of only regular full-time employees.

On February 17, 1999, the I.B.E.W. filed two grievances. The first grievance alleged the Employer subcontracted out the manufacturing of cables and patchbays for sound installation, without first notifying the union and providing justification, as specified by the collective bargaining agreement. It appears from the record that I.B.E.W. and the Employer may have entered into an agreement to resolve this dispute. The second grievance alleged the Employer subcontracted electrical work at the 1007 facility in violation of the collective bargaining agreement. The record establishes that the parties eventually entered into an agreement to resolve this dispute because the facility involved was not a "studio property."

On March 26, 2001, the I.B.E.W. filed a fourth grievance alleging the Employer violated the contract by laying off long-term bargaining unit employees Fanger and Robert Kaiser (Kaiser). The Union maintains that these employees performed electrical and sound installation, service, repair, maintenance, refurbishment and construction duties at the 1021, 1007, 6601 and 900 facilities. The Union contends that, once these employees were laid off, persons not covered by the contract were performing their work. The Union demanded reinstatement and compensation of back pay and benefits lost as a result of the lay off. With respect to the I.B.E.W.'s claim that persons not covered by the contract were performing such work, the Employer's response was that to the extent such work was required to be performed from time to time, both employees were called back to perform such work. The record shows Kaiser and Fanger were called back to work, and that Kaiser shortly retired thereafter. As of the conclusion of the hearing, this grievance was still pending.

On May 1, 2001, I.B.E.W. filed a grievance concerning the CBS facility. It appears from the record that, at the time of the hearing, this was an ongoing dispute involving I.A.-represented Y-4 and Y-7a employees removing wires, racks, connectors, and moving a console from a room. The I.B.E.W. argues, contrary to the Employer, that I.B.E.W.-represented employees, including 3735 employees, should have performed the work.[10]

[10]/ Through a letter, dated September 22, 1995, the I.B.E.W. filed a grievance with Todd-AO Glen Glenn Studios alleging it failed to use I.B.E.W. employees to perform work at the "Santa Monica" facilities. The Employer claimed Todd-AO Studios West, which purchased these facilities on January 29, 1995, operates as a separate entity and never entered into an agreement with I.B.E.W.

THE EMPLOYER'S BUSINESS

In order to understand the dispute in this case, an overview of the Employer's business is useful. A customer will generally seek the Employer's post-production services once it has finished filming its motion picture or television show. The final product delivered to a client is the sound track that accompanies the original film or television show. In order to produce the final product, sound must be merged to the final picture format. This process includes, among other things, the replacement of original dialogue that was unsatisfactory and the addition of sound effects and incidental sounds. After that editorial process is completed, tracks of sound are then taken to a recording stage, which is the physical location where the tracks of sound are recorded, re-recorded, re-edited, and re-mixed.

Stages are frequently built or remodeled. The initial step in the building or rebuilding of a stage is the appointing of a lead Y-4 project employee who designs the stage, including its physical and electrical layout. This lead Y-4 employee also works closely with the client and is the on site-advisor for any technical problems that may arise.

The second step consists of the ordering of materials. A significant portion of the materials and cables used by the Employer are actually manufactured off site and delivered in a finished form.[11]/ The third and final step involves the actual installation of the sound gear (such as consoles and digital audio machines), on-site interconnections and testing of systems. For pre-manufactured sound gear to be installed, it must first hooked up properly. In hooking up these systems, the Employer is basically running cables and terminating them. Finally, as this is all taking place, the physical renovations of the stage are also being implemented.

In 1997, the parties subsequently agreed to proceed to arbitration. However, it appears from the record that the arbitration may not have ever been held.

[11]/ The materials can be anything from interconnections (usually a series of wires that connect to different machines) and/or consoles (devices used by mixers to raise and lower voices which feeds different machines where sound elements may be placed) to complicated racks of gear consisting of patch bays and routing sync distribution systems, which send timing information to all the sound gear so they can all function properly and together.

WORK PERFORMED BY Y-4, Y-7a AND 3735 EMPLOYEES

At the facilities where there is no I.B.E.W. contract, as well as at the facilities covered by the I.B.E.W. contract, Y-4 and Y-7a employees' tasks include the design, building and rebuilding stages, maintenance of electrical audio equipment, determining the location where the sound equipment is to be installed, and, if necessary, training personnel on the operation of such equipment. In terms of maintaining electronic equipment, these employees test and repair machines.[12]/

Only at the facilities where there is no I.B.E.W. contract, do Y-4 and Y-7a employees perform the following tasks: installations in the audio production, low voltage wiring, the laying of cable and setting of interconnections between equipment, and the making of custom-made cables and interconnectors for special needs. The additional electrical wiring work, consisting of high voltage wiring[13]/, is performed by outside electrical contracting firms.

The job tasks of I.B.E.W.-represented 3735 employees, as evidenced in the record and the most recent I.B.E.W. Master Agreement, include: (1) all temporary or permanent electrical wiring installation work,[14]/ (2) the laying of all electrical conduit; (3) the installation of studio electrical sound equipment (excluding engineering work and minor alterations[15]/ of equipment and circuits); (4) the fabrication of all cables in Sound Departments; service and repair of power cables when not on production; and (5) utility maintenance. With regards to installation work, 3735 employees do installation of permanent electrical conduit and low-voltage wiring. With reference to the 3735 employees' function of installing studio electrical sound equipment, the record shows that traditionally these employees have worked on interconnections between equipment, such as that of audio and video. However, how the equipment is going to be interconnected and where the equipment is to be physically installed are primarily

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[12]/ The maintenance of electrical equipment such as fuse boxes or high voltage distribution boxes would be outside the scope of their duties.

[13]/ Although one witness indicated that AC voltage can be either high or low voltage, in the remainder of the record the parties, and witnesses use the terms AC and high voltage interchangeably.

[14]/ As to all temporary installation work, if the task requires running of an electrical cord across a room, it would be done by Y-4 and Y-7a employees.

[15]/ The term "minor alteration" includes any changes, modifications and replacement of component parts of sound equipment and systems.

decided by Y-4a and Y-7a employees. The fabrication of cables by 3735 employees mainly involves cable created at the production facilities for interconnections and wiring systems. Cable is created on-site because some projects require special wiring, which cannot be purchased pre-made from outside suppliers. 3735 employees are also responsible for the repairs on this type of electrical cable. Finally, a large part of utility maintenance duties consists of changing fluorescent light fixtures, taking care of power outages and the like.

The I.B.E.W. Master Agreement lists additional work under the jurisdiction of I.B.E.W. which, as evidenced by the record, is not generally being performed by I.B.E.W.-represented employees for a variety of reasons. This work includes:

1. All generator rooms and rectifier rooms when such rectifiers are used in place of and instead of generators;
2. All portable generators sets and prime movers therefore, where consistent with established custom and practice, and rectifier sets when such rectifier sets are used in place and instead of generators;
3. The installation of all motors or generators when same are under the supervision of the electrical department of the studios[16]/;
4. All repair and maintenance work in and around the studio and all shop work, the same to apply to the manufacturing of new equipment and repairing of all electrical equipment;
5. All operation of all electrically-driven wind machines if a person is hired specifically for that purpose or, in the studio, if a currently-employed person from the Electrical Department is readily available to perform such work;
6. Installation, excluding that pursuant to a sales or a construction agreement, and maintenance, excluding work covered by warranty, of permanent or portable refrigeration and air conditioning systems and heating systems consistent with Producer's historical custom and practice and normal operation of such equipment and systems consistent with the Producer's historical custom and practice;
7. All operation, maintenance and repairs on permanent generators, portable generators for which amperage exceeds 200 amps and storage batters, except wet cell batteries used on production, and except battery charging on trucks or compact portable recording units or channels where the charging of batteries or other operations necessitates only the turning of switches; and
8. All repair work on power equipment, such as motors, battery-changing rectifiers, alternators and primary power equipment (excluding audio and higher frequency equipment); the manufacture, installation, maintenance, service and repair, excluding that pursuant to a sales, construction or

[16]/ The word studio, herein and thereafter, refers to an Employer's facility.

> service agreement, of the following permanent and fixed installations in the administration building and offices: intercommunicating systems, telephones, dictographs, and buzzers (except those used in connection with sound recording and those used on production).

With regard to item #1 above, relating to generator and rectifier rooms, the record shows that the Employer no longer has generator rooms per se and uses rectifiers only in film projection. Rectifiers are high voltage devices which generate a lot of heat and, because of their loud noise, are put in isolation from other equipment. At the Employer's facilities, I.A.-represented projectionists now maintain rectifiers. As to items #2 and #3 above, relating to portable generator sets and the installation of motors and generators, the record revealed that this is not applicable to the Employer because it is not a location-based company. As to the tasks of repair and maintenance work (item #4 above), these tasks are currently performed by I.A.- represented Y-4 and Y-7a employees. The operation of electricity driven wind machines (item #5 above) does not apply to the Employer as it does not have such equipment. As to the installation and maintenance of permanent or portable refrigeration, air conditionings and heating systems (item #6 above), it appears from the record that I.B.E.W.-represented employees may be involved in the wiring of such equipment, but any maintenance and repair is handled by an outside contractor. As to the work involving the operation, maintenance and repairs on permanent generators, portable generators and storage batteries (item #7 above), none of the Employer's employees perform maintenance or repairs on generators, and wet cell batteries are no longer used. The Employer uses standard 9-volt storage batteries and commercial grade batteries. Concerning repair work on power equipment (item #8 above), the Employer does not use such equipment, except for rectifiers, which are maintained by the I.A.-represented employees. The Employer does have emergency generator systems for power, which may, arguably, fall under item #8 above. However, it appears from the record that these are not maintained or serviced by any of the Employer's in-house employees; servicing is subcontracted out to outside companies. Finally, any manufacture, installation, maintenance, service and repair of intercommunicating systems, telephones, dictographs, and buzzers is handled by a separate department which is non-union.

CHANGES IN TECHNOLOGY

The Employer contends that technological changes, specifically in audio wiring and equipment, have impacted the traditional work tasks of I.B.E.W.- represented 3735 employees. The way sound is recorded has progressed from analogue technology (a representation of sound by a recorded wave on a piece of magnetic medium) in the 1940's, to tape based technology, to digital recording technology in the early 1980's.

It appears from the record that starting in the 1940's, large electrical systems containing sync distribution rooms[17]/ were used. These operated via high-voltage electrical wiring through an entire facility. The electricity was distributed directly to high voltage motors on machines. The use of high voltage motors decreased in the era of tape based machines when the ability to drive motors in different ways with low voltage was introduced.

As technology continued to change, the recording of sound on tape-based systems was replaced with digital recording technology, where sound was no longer represented by a recorded wave on a magnetic medium. Instead, a computer would describe the sound wave and store the information numerically. In the past ten years, technological developments have resulted in sound data being stored on hard drives and digital sound no longer being recorded in one facility. Currently, all of the Employer's facilities are connected by a sophisticated high-speed wide area computer network, which allows the Employer to record and deliver audio signals across town at high speeds.

These technological changes occurring over the past fifty years have affected the equipment used in post-production and reduced the amount of high voltage electrical wiring work available. Previously, the Employer created most of its studio sound equipment by custom building power supplies and/or installing purchased power supplies into high voltage devices. In the past, the use of high voltage motors, generator rooms and high voltage electrical driven equipment was more common; this

[17]/ A sync distribution is a way of sending signals from one central location to multiple locations so that all those multiple locations can function together. Sound had to sync with the motion picture and be arranged at the right speed.

meant that more electrical work had to be performed. Today, the majority of equipment is manufactured off-site, with pre-manufactured electrical outlets ready to be installed.

There is no doubt that technological changes have affected the duties of I.B.E.W.-represented employees and reduced the amount of work within their jurisdiction. Today, of the Employer's overall wiring work at its facilities, approximately ninety-nine percent is comprised of low voltage wiring (audio, video and digital signal routine) and the remaining one-percent is high voltage wiring. On an installation, the percentages may occasionally rise to ten to fifteen percent of high voltage, but on the whole, high voltage is about one percent of the total of wiring work performed at the facilities. While the record shows that technological changes have brought about the reduction in high voltage wiring and the need for high voltage powered systems, the record does not show that this is a recent phenomenon. Technological advances have been affecting the work of I.B.E.W. employees for well over fifty years. Finally, the record does not demonstrate substantial changes in the work of the Employer's Y-4 and Y-7a and 3735 employees in the last few years.

COMMUNITY OF INTEREST

Among the factors the Board examines in determining the propriety of accretion is community of interest. Here, the record facts indicate that there are many shared terms and conditions of employment between the I.A.-represented Y-4 and Y-7a employees, and the I.B.E.W-represented 3735 employees. Both groups of employees work solely in the greater Los Angeles area. The I.A. contract covers five facilities, listed in the amended Unit Clarification Petition,[18]/ while I.B.E.W. contract covers three of the five locations (the 900, 1021 and CBS facilities). [19]/ The Employer's facilities all engage in similar projects and, from the record, there does not appear to be differences in their hours of operation and supervision.

In particular, it is noted that Y-4 and Y-7a employees perform some of the same job tasks as 3735 employees, such as performing low voltage electrical wiring and custom-making cables and interconnectors for special needs, at the facilities where the I.B.E.W. contract does not apply. At the facilities, where the I.B.E.W. contract is

[18]/ The "Santa Monica" facilities are not being counted in this number.

in effect, 3735 members perform all these tasks exclusively. With regard to the 3735, Y-4 and Y-7a employees who work at facilities covered by both contracts, the primary responsibilities of these employees are functionally related to and dependent on one another. The Y-4 and Y-7a employees design, build and rebuild stages, and maintain electrical equipment. The 3735 employees do the installation of all the permanent electrical conduits and create electrical cable.

The 3735 employees, during the course of their work, have frequent face-to-face contact and communications with I.A. employees.[20]/ The record also establishes that Y-4, Y-7a and 3735 employees, regardless of the facility they are based out of, may be sent to work at other multiple locations, on a temporary basis.

The employees in the two different bargaining units are eligible to receive the same fringe benefits. They may both participate in the same type of motion picture pension plan, health and welfare plan, 401 K plan, and flexible spending plan, although separately administered by the Employer and the different unions.[21]/ In addition, they share the same parking facility and parking benefits. They are also provided with the same employee handbook and new employee hire packet.[22]/ With respect to the handbooks, these provide employees with uniform personnel policies and procedures. Vacation and holiday benefit provisions are contained in the respective Union's contracts and are substantively the same for both Unions. Employees in both units are paid their vacation and holiday payments on a weekly basis, pursuant to the respective contracts.

The I.B.E.W.-represented employees and the I.A.-represented employees work similar schedules. The work hours for all employees, as disclosed by the record, appear to be anywhere from 8:00 a.m. to 7:00 p.m. The majority of I.A.- and I.B.E.W.-represented personnel work day shifts. At times, employees may work an uncertain

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[19]/ The 1007 Seward and the 6601 Romaine locations are also not being counted in this number.

[20]/ The I.B.E.W. argues and the record reflects that when 3735 employees are working with Y-4 and Y-7a employees, the Y-4 and Y-7a employees do not together with the 3735 employees pull cable, put connectors and set up racks.

[21]/ Due to different effective dates of the separate collective bargaining agreement, workers do not receive contributions to their motion picture pension plan at the same time.

[22]/ The only difference in the hire packet received by unit employees of the two unions is an information sheet, which relates to which Union the employee is eligible to join.

time schedule based on when projects are assigned and when they need to be completed.

Employees, regardless of which Union they are represented by, must clock in using the time cards at the respective facility they work at, unless called to work at another location. The record contains no evidence that the manner and means of payroll differs for employees in the two different bargaining units. Additionally, employees in both units are currently paid on the same day. The layoff and meal penalty/meal period provisions in the I.A. and I.B.E.W. contracts are the same. The contract policies relating to night premiums, callbacks, rest periods, and overtime are also identical.

The 3735 employees and I.A.-represented Y-4 and Y-7a employees use many of the same types of tools. While the employees typically use their own tools, occasionally, the Employer could provide them with tools in order to complete a task. On occasion also, tools are shared between the Y-4, Y-7a and 3735 employees.

The record establishes the following differences in the units' terms and conditions of employment. While there appears to be an overlap of supervision, not all of the personnel supervising Y-4 and Y-7a employees supervise 3735 employees. At the top of the Employer's supervisory hierarchy is the President of the audio division. He supervises, among others, the Vice-President of Engineering (Bill Johnston, hereinafter Johnston).

I.A.-represented Y-4 and Y-7a employees are supervised by Johnston, who also oversees the cinetechnician gang boss (Don Quiroz, hereinafter Quiroz), who in turn oversees the I.A.-represented cinetechnicians.[23]/ Quiroz's role as a gang boss involves being a foreman with supervisory duties. In addition to being in charge of the cinetechnicians, Quiroz also works closely with the managers at each of the individual locations, although they do not report to him.

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[23]/ Cinetechnicians are included in the present I.A. bargaining unit description and the proposed unit bargaining description of the Unit Clarification Petition, as amended. They are based out of the 1021 location and are considered general laborers, who perform a number of functions, including building maintenance (painting walls, putting up walls, etc.). They do not perform any wiring work. They, like Y-4, Y-7a and 3735 employees, are called to work in multiple locations.

In addition to his above tasks, Quiroz is responsible for assisting with the building and rebuilding stage projects, including making calls to the I.B.E.W. for hiring I.B.E.W.-referred employees for construction projects. The Employer, argues, contrary to the I.B.E.W., that 3735 employees report directly to Quiroz. In this regard, the Employer maintains that it is only when 3735 employees are working on a construction project that they report directly to the Y-4 lead project employee, otherwise, if they are working on day to day maintenance duties, they report to Quiroz. The I.B.E.W, on the other hand, points out that there is a lack of evidence in the record that Quiroz actually directs the work of 3735 employees or otherwise supervises their day-to-day work. The record shows that Quiroz is based out of the 1021 facility, where an I.B.E.W. shop is located. The Employer admitted at hearing that its 3735 employees speak often to Quiroz but do not communicate with him daily. The record does not contain any testimony by Quiroz or any unit employees that would clearly indicate Quiroz directly supervises or does not supervise I.B.E.W.-represented employees.

Additionally, the Employer alleges and the record facts demonstrate that, very often, when the I.B.E.W.-represented 3735 employees are involved with an audio wiring installation or an audio construction project, the I.A.-represented lead Y-4 project employee will supervise the 3735 employees and their electrical wiring work directly. A Y-4 lead project employee will assign the 3735 employees their duties[24]/ and provide the project crew with proper documentation for construction purposes, including the schematic[25]/ designed by a Y-4 employee. Although a Y-4 lead project employee designs a stage, the 3735 employees working on the projects make independent decisions on how the wiring is to be done. However, Y-4 lead project employees are the final authority and may override 3735 employee's independent judgement. Lastly, 3735 employees are not the only employees who must report to the Y-4 lead project employee when working in construction projects. Other Y-4 and Y-7a employees assisting with the project must also work under the guidance of this lead project

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[24]/ At hearing, an I.B.E.W. witnesses admitted that while working for the Employer, in duties which appear to be that of 3735 employees, they often worked with I.A.-represented employees and routinely took orders from I.A.-represented project Y-4 employees.

[25]/ The schematic is a configuration document detailing the wiring destinations and specifications.

employee. Therefore, while 3735 and Y-4 and Y-7a employees have different tasks in a construction project, they all must report to the Y-4 lead project employee in charge.

The record shows that 3735 employees do have an I.B.E.W.-represented gang boss, who they report to and who oversees their daily work. The record contains no facts which allow a conclusion as to whether the gang boss is a supervisor within the meaning of the Act or a leadperson.

Aside from the lack of common day-to-day supervision, the record demonstrates that although Y-4 and Y-7a employees do perform some of the same functions performed by the 3735 employees, the majority of their functions are generally different from those performed by the 3735 employees. It is only at the facilities where the I.B.E.W. contract does not apply, where Y-4 and Y-7a employees perform low voltage wiring, lay cable, and make custom-made cables.

While the record revealed interchange of employees among the different facilities, there is no evidence in the record of interchange or transfer of personnel among the 3735 and the Y-4 and Y-7a positions. Another distinction between the two groups of unit employees is that I.B.E.W.-represented bargaining unit employees enjoy seniority rights, while the I.A. bargaining unit employees do not. The I.A. gave up their seniority rights in its collective bargaining in the late 1990's.[26]/

The I.B.E.W.-represented 3735 employees and the I.A.-represented Y-4 and Y-7a employees do not receive the same training. The I.B.E.W has a state approved apprenticeship-training program. Since the program is not mandatory, not all of its members participate in it. According to the I.B.E.W., those members who do not participate in the program have received applicable training while in the armed services or from a sister Local who has a related program. The I.A., on the other hand, does not have any formal training programs for its members. Nonetheless, many of its Y-4 and Y-7a members have electronics degrees (either bachelor's or associates degrees) and former applicable experience from working in recording studios. The record established that employees performing electrical work for the Employer do not have to be licensed

[26]/ An I.B.E.W. employee, in accordance with the seniority rights, after having worked at one facility for a certain amount of days has the right to be recalled or terminated in order of seniority. By contrast, the I.A.-represented employees can be technically terminated at any time without regard to their years of employment with the Employer.

under State law, so long as their work is performed according to National Electrical Code (NEC) standards.

POSITION OF PARTIES ON THE PROPOSED UNIT CLARIFICATION

The position of the I.A. is that it is neutral as to the issues in this proceeding.

The Employer asserts that its petition unit for clarification should be granted because to continue to have employees represented by two different labor organizations is no longer appropriate in light of: (1) changes in the corporate structure and in technology; (2) the high degree of community of interests shared by the two bargaining units; (3) the long-festering problems resulting from the current collective bargaining relationships; and (4) the vast disproportion between the number of employees in the respective bargaining units. It points out that recent technological changes combined with new business acquisitions and consolidations have negatively affected the work of I.B.E.W.-represented 3735 employees. Of their work tasks, as outlined in the I.B.E.W. contract, the only work that remains is laying conduit and wiring. According to the Employer, its recent acquisitions and consolidations have also brought about the current situation where at the facilities not covered by the I.B.E.W. agreement, the I.A.-represented Y-4a and Y-7a employees can and do perform the electrical wiring tasks of I.B.E.W.-represented 3735 employees. Hence, the Employer contends that presence of two unions leads to an artificial division of work. Furthermore, it argues that given that the two units function as a single integrated unit, accretion is appropriate.

With regard to labor relations, the Employer asserts that continued fragmentation between the two collective bargaining units threatens labor stability as shown by an increasing number of jurisdictional claims filed by the I.B.E.W. Moreover, it points out that accretion is proper given the fact that members of the I.A. bargaining unit overwhelming outnumber the members of the I.B.E.W. bargaining unit. The Employer, in support of its petition, relies upon *U.S. West Communications, Inc.,* 310 N.L.R.B. 854 (1993). The Employer claims that *U.S. West* is controlling here because the facts in the instant case are at least as strong as in *U.S. West.*

Lastly, the Employer contends that I.B.E.W.'s position, alleging accretion is improper since its current bargaining unit constitutes a craft unit, is faulty. According to

the Employer, Section 9(b) of the NLRA, does not support I.B.E.W.'s position since the language of this section sets forth no language mandating that each separate craft union be set up as a separate craft unit. Rather, the Employer states, the Section 9(b) only prohibits the Board from deciding that any craft unit is inappropriate based on past determinations. The Employer maintains that the "Board does not need to allow the IBEW to remain a separate bargaining unit in order to protect the rights of the employees who practice their craft" at the Employer's facilities.

The I.B.E.W. argues that the petition should be dismissed on several grounds. First, it contends that unit clarification is not the proper forum for the resolution of the issues at hand; the real issue concerns work assignment (which of the Locals' members should perform certain wiring work). Second, I.B.E.W. contends that the petition falsely represented the unit and therefore should have been dismissed without a hearing. In this regard, the I.B.E.W. asserts that the original and amended petition failed to properly describe the I.B.E.W. and the I.A. existing bargaining units. Procedurally, due to the lack of proper description of the I.A. bargaining unit as a multi-employer bargaining unit, made up more than 100 employers, I.B.E.W. argues that not all interested parties received proper notice as required under Section 9(b). The Petitioner was the only employer to receive notice of the hearing.

I.B.E.W. counters the Employer's community of interest argument by contending that its bargaining unit has its own community of interest since working conditions differ between the two groups of employees: I.A.-represented and I.B.E.W.-represented employees do not all report to the same facilities; 3735 employees are not supervised by I.A. members[27]/; 3735 employees are hesitant to share their tools with anyone and work independently; and I.A. unit employees, unlike I.B.E.W. unit employees, enjoy seniority rights and have their own shop.

Lastly, the I.B.E.W. contends that it would be improper to entertain the petition since the existing units remain appropriate. Although technology advances have decreased the amount of work within the I.B.E.W.'s jurisdiction, technology has not eliminated the craft. The I.B.E.W. also states that it is improper to combine the two

[27]/ The I.B.E.W. claims that although the Petitioner contends that I.B.E.W.-represented 3735 employees report to Quiroz and lead project I.A.-represented Y-4 employees, 3735 employees report on a day to day to an I.B.E.W.-represented gang boss.

units since the I.A. unit is a multi-employer unit while the I.B.E.W. unit is a single craft unit limited to the Employer's facilities. The I.B.E.W. alternatively argues, that even if a unit clarification proceeding is available, the "Santa Monica facilities" should be excluded from the proposed bargaining unit since Todd-AO Studios West, the party to the latest Agreement of Consent covering the "Santa Monica" facilities, is not the petitioning Employer herein.

DISCUSSION OF PROCEDURAL ISSUES

The original petition, filed on August 15, 2001, contained inaccurate descriptions of the present and proposed units. The I.B.E.W. argues that since the petition failed to properly describe the existing I.A. unit as a single multi-employer unit, the Region's failure to give notice to all interested parties was fatal. On the first day of the hearing, the Employer moved to amend the petition, added the Vine facility to the present I.A. bargaining unit and the proposed bargaining unit descriptions, and corrected the errors relating to the unit exclusions; the hearing continued for 3 more days over a period of two weeks. As the record developed, evidence was presented that the I.A. is the exclusive bargaining representative of a multi-employer collective bargaining unit employing employees throughout the west coast studios of the employers covered by the I.A. Basic Agreement.

I.B.E.W. contends that the instant petition must be dismissed because it was originally defective. This argument is not persuasive. The petition was amended early-on and, as a practical matter, there was never any confusion among the parties re-garding its intent. No prejudice to the I.B.E.W. is claimed or shown. As to the failure to notify other employers who are signatories to the I.A. Basic Agreement of this proceeding, I conclude this issue need not be decided and is moot by the conclusion reached in this decision. Accordingly, I find that no party has been prejudiced or denied due process. I, therefore, reject I.B.E.W.'s position that the instant petition be dismissed on purely procedural grounds.

DISCUSSION OF SUBSTANTIVE ISSUES

Board law is clear with regard to proper invocation of the unit clarification process: it is appropriate for resolving ambiguities concerning the unit placement of

individuals in newly created classifications; and, it is appropriate where an existing classification undergoes recent and substantial changes, thereby giving rise to a question of whether the individuals in the existing classification should continue to be included in or excluded from the bargaining unit. Unit clarification is inappropriate for upsetting an agreement between a union and an employer or an established practice of such parties concerning the unit placement of individuals. *Union Elec. Co*., 217 NLRB 666, 667 (1975).

Unit clarification is but one method whereby the Board may resolve issues of accretion. Simply stated, accretion cases, which are often quite complex, pose the question of whether one group of employees should be added to another existing unit by operation of law or administrative determination. While a disputed, newly-established classification or a recent and substantial change in circumstances may trigger an accretion, the Board has held that unit clarification may not be used to accrete to a unit an employee classification which historically has been excluded from the unit. *Id*. Traditionally, the Board has applied the doctrine of accretion sparingly and restrictively because it denies the affected workers their right to select their own bargaining representative, a right most central to the National Labor Relations Act. *United States Steel Corp*., 280 NLRB 837 (1986); *Melbet Jewelry*, 180 NLRB 107 (1969).

In determining whether a valid accretion exists the Board examines: interchange between the two groups of employees, common supervision, similarity of terms and conditions of employment, similar duties, and functional integration. Such criteria are all factors considered in the requisite community of interest analysis. *Pergament United Sales, Inc*., 296 NLRB 333, 344 (1989); *citing Compact Video Services*, 284 NLRB 117 (1987). Other vital factors the Board considers in accretion cases are bargaining history and historical exclusion. *Robert Wood Johnson Univ. Hosp*. 328 NLRB 912, 914 (1999); *United Parcel Serv*., 303 NLRB 326, 327 (1991).

The Board is hesitant to clarify bargaining units during the term of a collective bargaining agreement that clearly defines the bargaining unit. *Wallace-Murray Corp*., 192 NLRB 1090 (1971). As the Board noted in *Edison Sault Elec. Co*., *supra*, "to permit clarification during the course of a contract would mean that one of the parties would be

able to effect a change in the composition of the bargaining unit during the contract term after it agreed to the unit's definition." This would be unnecessarily disruptive of an established bargaining relationship. *San Jose Mercury News*, 200 NLRB 105 (1972). In some limited circumstances, however, the Board may find that the interests of stability are better served by entertaining a unit clarification petition during the term of a contract. As such, on occasion the Board has processed a unit clarification petition shortly after a contract is executed absent evidence that the petitioner abandoned its request in exchange for contract concessions. *St. Francis Hosp*., 282 NLRB 950 (1987). However, even where a petitioner is able to establish a *bona fide* reservation of its right to file for clarification, when the employees have been historically excluded from the unit, the Board has found that petitioner has waived its right to pursue unit clarification. *Robert Wood Johnson Univ. Hosp*., *supra*. Indeed, the Board does not normally use its power to police its certifications to include in a unit by way of clarification classifications or categories of employees who historically have been excluded. *Plough Inc*., 203 NLRB 818 (1973). Further, the Board has long held that when parties to a bargaining relationship have excluded a group of employees from an established bargaining unit, the Board will not clarify the unit to include those employees unless substantial, recent changes have created a compelling case for accretion. *Gitano Group*, 308 NLRB 1172 n. 10 (1992).

Here, the Employer has maintained a highly centralized and uniform corporate and administrative structure with regard to the employees at issue herein. Indeed, the classifications at issue in certain locations perform the same work under substantially similar working conditions. At the facilities where both the I.B.E.W. and the I.A. contract apply, the I.B.E.W.-represented 3735 employees and the I.A.-represented Y-4 and Y-7a employees work in the same places. However, it cannot be determined from the record that, at these facilities, these groups of employees share on-site day-to-day supervision. In addition, the record contains no evidence of involuntary or voluntary transfer of employees between these groups of employees. Hence, while I note that there are limited variations in the two units' terms and conditions of employment, their work is functionally dependent upon one another. Accordingly, there is a substantial community

of interest between the employees represented by I.B.E.W. and those employees that the I.A. represents.

The Employer asserts that dealing with two units has created unworkable difficulties for it. When considered in its entirety, and particularly in view of the work and number of individuals involved here, the record fails to fully support the Employer's claim. Rather, the record demonstrates that through the years the two units have caused the Employer and the Unions inconvenience. Here, the Employer has raised the issue of business hardship or interference with labor relations. The I.A. has declared its neutrality, electing not even to file a post-hearing brief. The I.B.E.W. contends that the disputes have arisen but that these relate to jurisdictional disputes over the Employer's misassignments of work. When there has been doubt regarding work assignments, the I.B.E.W. filed grievances. The record shows that since January of 1998, I.B.E.W. has filed at least five grievances against the Employer, most of which have been have been resolved short of arbitration.

Since the 1940's new technology has enabled the Employer to change its post-production business. Historically what had distinguished the two units is electrical wiring work and the use of high voltage electricity by the I.B.E.W.-represented 3735 employees. However, since the 1940's technological advances have reduced the need for high voltage electrical work, high voltage electrical driven equipment, and in-house custom-built power supplies and wiring, thus, reducing the amount of work within the I.B.E.W.'s jurisdiction. Further, it appears from the record that as a result of new acquisitions and consolidations, the I.A.-represented employees perform some of the same functions traditionally performed by I.B.E.W.-represented employees, at the facilities where the I.B.E.W. contract is not in effect.

The Employer asserts that technological changes have established a proper basis for accretion. However, the record reveals no substantial changes in the work of the Y-4 and Y-7a and 3735 employees in the last few years. Accordingly, cases where the Board has deemed unit clarification appropriate because historically excluded classifications have undergone recent, substantial changes do not apply to the instant case. See, *Southwestern Bell Tel. Co*., 254 NLRB 451 (1981); *Indiana Bell Tel. Co*., 229 NLRB 187 (1977).

In *U.S. West Communications Inc.,* 310 N.L.R.B. 854 (1993), the Board affirmed the Regional Director's decision that the employer's technological and organizational changes created a situation such that 500 ORTT-represented long distance telephone technicians, who worked in three states, were properly accreted into a 14-state bargaining unit represented by CWA. While, at first, the facts of *U.S. West* appear to resemble the facts of the instant case, the two cases are readily distinguishable. In *U.S West*, the employer, created in the 1980's after the AT&T divestiture, was formed as the result of the consolidation of three companies, including Pacific Northwest Bell ("PNB"). Before consolidation, PNB's territory consisted of Washington, Oregon and northern Idaho. Unlike most of the other telephone companies, PNB owned, operated and maintained its own long distance or "toll" equipment and facilities.

At PNB, technicians represented by ORTT had historically provided and maintained long distance lines. CWA-represented technicians had provided and maintained local lines. From their original dates of certification in the 1940's and for some time thereafter, each group received specialized training because each bargaining unit relied on different technology.

After PNB and the two other companies were consolidated, new technology was developed eliminating the distinction between long distance and local transmissions. With the advent of this new technology came remote testing; previously, testing had to take place near the equipment being tested. This substantial change eradicated the historical distinction between toll and local work, and blurred the distinction between the two bargaining units. In addition, the employer's consolidation had created a different operational and administrative structure.

The facts of the instant case are different: historically and continuing to date, the Y-4, Y-7a and 3735 employees represented by the I.A. and the I.B.E.W. have <u>always</u> performed tasks unique to their job classifications. Even with the advent of advanced technology, this continues glaringly to be the case. This case is also distinguishable from *U.S West* because in this case, technological advances and reorganization have not caused employees represented by the two labor organizations to lose their separate identity. Another distinguishing factor is that in *U.S West* there was evidence of centralized training and employee transfers between the two groups of

employees at issue; that is not the case here. While I.B.E.W.-represented 3735 employees and I.A.-represented Y-4 and Y-7a employees share common working conditions to a considerable degree, I find the importance of the parties' bargaining history and the historical separateness of the I.B.E.W.-represented unit are far more cogent than they were in *U.S. West*. Additionally, in *U.S. West* unit clarification did not disrupt the parties' collective bargaining agreements. The collective bargaining agreement between the employer and ORTT had expired. Here, while the I.B.E.W. Master Agreement extension appears, according to the record, to have expired July 31, 2001, about two weeks before this Unit Clarification petition was filed, the I.A. Basic Agreement was in effect from August 1, 2000, through July 31, 2003. There is no evidence in the record that, prior to filing of the Unit Clarification Petition or during negotiations for the I.A. Basic Agreement or the most recent four Local agreements, the issue of accretion of I.B.E.W.-represented employees into the I.A. bargaining unit was raised by the Employer to the I.A. or the I.B.E.W. Clarification is not appropriate during the term of a collective bargaining agreement to permit one party to alter a clearly defined unit after it agreed to the unit's description.

CONCLUSION

In light of the above, based upon the record and application of current Board law, I do not find clarification of the bargaining unit to be appropriate. Although the I.B.E.W.-represented employees now perform less work than they previously did, this factor alone does not require the I.B.E.W.-units inclusion in the I.A. bargaining unit. In this regard, I find that other factors such as the parties' bargaining history, the lack of recent substantial change in the work, the lack of evidence as to interchange or transfer between the I.B.E.W.-represented 3735 employees and the I.A.-represented Y-4 and Y-7a employees, and the fact of historical exclusion are determinative and controlling. Unit clarification would deny the affected employees their right to select their own bargaining representatives and thereby thwart the purposes of the Act.

Accordingly, clarification of the bargaining unit is not warranted.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **March 21, 2002**.

DATED at Los Angeles, California this 7th day of March, 2002.

/s/ James McDermott
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